



State of Tennessee Department of Children's Services

Administrative Policies and Procedures: 4.20

Subject: Workplace Harassment

Supersedes: DCS 4.20, 04/01/03

Local Policy: No

Local Procedures: No

Training Required: No

Applicable Practice Model Standard(s): No

Approved by:

Effective date: 01/01/98

Revision date: 12/01/05

Application

To All Department of Children's Services Employees

Authority:

TCA 37-5-106; Title VII of the Civil Rights Act of 1964; Department of Personnel Workplace Harassment Policy

Policy

The Department of Children's Services will provide a workplace environment free of harassment of an individual because of that person's race color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws and policies.

Procedures

A. Conduct

prohibited by DCS

The Department of Children's Services strictly forbids and will not tolerate:

1. Harassment of any employee, applicant, or third party on the basis of an individual's race color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, or veteran's status. The fact that the alleged offender meant no harm or was teasing will not excuse conduct that violates this policy.
2. Any form of retaliation directed against an employee, applicant, or third party who either complains about harassment or participates in any investigation under this policy.

A. Complaint reporting

1. If an employee, applicant, or third party who believes he/she has been subjected to harassing conduct that violates this policy or believes he/she has been subjected to retaliation for engaging in protected conduct under this policy must report the alleged incidents as soon as possible after the incident occurs.
2. Employees, and applicants may file a complaint with:
 - ◆ DCS Diversity Initiatives Office
 - ◆ DCS Ombudsman's Office
 - ◆ DCS Central Office Personnel Director
 - ◆ DCS Division Director
 - ◆ DCS Supervisor, or
 - ◆ Any individual designated by the department's appointing authority.
3. Under no circumstances is the individual alleging workplace harassment required to file a complaint with the alleged harasser. If an employee or applicant feels he/she cannot file a complaint within DCS, that person should contact the Tennessee Department of Personnel's EEO/AA Division or the Employee Relations Division.
4. Individuals who wish to file a complaint are encouraged to submit the complaint in writing and to include:
 - ◆ A description of the incident(s)
 - ◆ Date(s) and Time(s),
 - ◆ Place(s), and any witnesses
5. If a complaint involves an Executive Director, Assistant Commissioner, Deputy Commissioner or Commissioner, an employee or applicant may file the complaint with the Tennessee Department of Personnel's EEO/AA Division.
6. Supervisory personnel who receive a complaint alleging workplace harassment or learns of conduct that may violate this policy must immediately report it to the divisions and/or appropriate staff as outlined in *Section A, 2* above.

7. Supervisory personnel or other authorized agents of DCS receiving a complaint under this policy will use the standardized Department of Personnel form ***PR-0411, Workplace Harassment Intake/Referral***.
8. The form must be submitted to the DCS Division of Diversity Initiatives Office within five (5) working days from the time of receiving the complaint.

B. Confidentiality

1. To the extent permitted by law, DCS will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action. However, DCS cannot guarantee confidentiality. Any documents that are made or received in the course of the investigation are public records under the State's Public Records Act, unless otherwise exempted by state law. Unless such exemption applies, state law will prevent DCS from maintaining confidentiality of investigative records.
2. The ***Statement of Confidentiality*** below will be read to the complainant at the time of the initial intake of the complaint. During the investigation it will be read to the alleged accused and witnesses at the time of the initial contact by the investigator:

"To the extent permitted by law, the State of Tennessee and the Department of Children's Services will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action. However, the State and the Department of Children's Services cannot guarantee confidentiality."

C. Investigation

1. The DCS Division of Diversity Initiatives will be responsible for conducting a thorough and neutral investigation of all reported complaints of workplace harassment or retaliation as soon as practicable.
2. If the investigation presents a conflict of interest, then another internal source will conduct the investigation as designated by the Executive Director of Human Resources or by the Department of Personnel as dictated by this

policy.

3. The investigation will be supervised by the DCS Director of Diversity Initiatives and will include an interview with the complainant to determine if the conduct in issue falls within the terms of this policy. If conduct is determined to fall within this policy, the investigator will interview the alleged offender and any other witnesses who have direct knowledge of the circumstances surrounding the allegations. The investigator will:
 - a) Inform the complainant, the alleged offender, and witnesses of the State's policy on confidentiality and retaliation at the time of initial interview.
 - b) Only communicate information concerning the allegations to those to whom he/she is authorized to report such matters.
 - c) Create an investigative memorandum for every complaint of illegal discrimination and harassment. The Director of Diversity Initiatives will send the investigative memorandum through the Executive Director of Human Resource Development to the Deputy Commissioner of Administration and Training for final disposition.
4. Upon completion of the investigation, the DCS Director of Diversity Initiatives will issue a letter to the complainant and the alleged offender informing them of the outcome of the investigation.

D. Corrective action

Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action and any supervisory personnel, who allow workplace harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct, will be subject to corrective action. Such corrective action includes, but is not limited to:

1. Mandatory participation in counseling,
2. Training,
3. Disciplinary action up to and including termination, and/or
4. Changes in job duties or location

E. Retention of

1. In cases that result in discipline, the disciplinary actions will

- records** be maintained in the employees' personnel file and is subject to the Department of Personnel's rules concerning the retention of disciplinary records.
2. Any documents generated by the investigation and any subsequent disciplinary action will be preserved with the investigation file and maintained by the DCS Division of Diversity Initiatives and/or by the Department of Children's Services Office of General Counsel pending the adoption of a uniform rule by the Tennessee Department of Personnel concerning the disposition of such records.

Forms

PR-0411 Workplace Harassment Intake/Referral

Collateral Documents

[Department of Personnel Resource Manual Workplace Harassment Policy](#)

Standards

ACA 3-JCRF-1C-04

ACA 3-JTS-1C-07-1

DCS Practice Model Standard - 2-105B

Glossary

<i>Term</i>	<i>Definition</i>
<i>Workplace harassment:</i>	<ol style="list-style-type: none">1. Any unwelcome verbal, written, or physical conduct that either degrades or shows hostility or aversion towards a person because of that person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability or veteran's status that:<ol style="list-style-type: none">a) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;b) Has the purpose or effect unreasonably interfering with an employee's work performance;c) Affects an employee's employment opportunities or

compensation.

2. The following specific examples of workplace harassment are not exhaustive; they illustrate, however, the types of conduct that violate this policy:
 - a) Unwelcome touching or near-touching, which can encompass leaning over, cornering, hugging, or pinching; sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and sexist put-downs;
 - b) Slurs and jokes about a class of persons, such as persons who are disabled or a racial group;
 - c) Distributing via e-mail epithets, slurs, jokes or remarks that are derogatory or demeaning to a class of persons or a particular person or that promote stereotypes of a class of persons;
 - d) Display of explicit or offensive calendars, posters, pictures, drawings or cartoons that are sexually suggestive or that reflect disparagingly upon a class of persons or a particular person;
 - e) Derogatory remarks about a person's national origin, race language, or accent.

Hostile environment:

A hostile environment occurs when a victim is subjected to unwelcome and severe or pervasive comments based on race, color, national origin, age (40 and over), pregnancy, religion, creed, disability, veteran's status or any other category protected by civil rights laws. A hostile work environment may also be created by innuendoes, touching, or other conduct that creates an intimidating or offensive workplace.

Sexual harassment:

Any unwelcome sexual advance, request for sexual favors, or verbal, written, or physical conduct of a sexual nature by a manager, supervisor, co-worker, or non-employee (third party). There are two types of illegal sexual harassment. Managerial harassment occurs when a manager or a supervisor gives or withholds a work-related benefit in exchange for sexual favors from the victim or takes an adverse action against an employee for refusing a request for sexual favors. In some circumstances, threatening to take such actions may also be a violation of this policy. Certain actions may also create a hostile work environment.

Retaliation:

Retaliation is overt or covert acts of reprisal, interference,

restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

Third parties:

Are individuals who are not state employees but who have business interactions with state employees. Such individuals include, but not limited to, customers, such as applicants for state employment or services, vendors, contractors, providers, or volunteers.